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Department of the Treasury

Washington, DC 20224

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Date:

May 26, 2010

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City =

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Dear:

This is in response to your request for a private letter ruling that the Department is not required to file information returns under § 6041 of the Internal Revenue Code for the payments that the Department will make to parents of pre-school special needs children to reimburse the expenses of transporting students to and from school.

FACTS

The Department is obligated to provide transportation services to eligible City students. The Office, an entity within the Department, is charged with ensuring that all eligible City students receive safe, clean, and timely transportation to and from school. The Office coordinates transportation services to and from school for eligible general education and special education students in both public and private schools. Currently, these services include stop-to-stop busing, door-to-door busing, and public transportation.

The Department is developing programs to reduce its transportation costs and provide better transportation services. A pilot Program for special education students will provide the option to parents to either continue with the service provided by the Office or to provide their own transportation. Under the Program, the Department will pay the parents a per diem rate for transporting eligible children whether by public transportation, private vehicle, licensed taxi, or car service.

Parents electing to enroll in the Program will be required to sign a form acknowledging that: (1) they will be responsible for providing transportation to and from school; (2) payments made under the Program are intended to cover only actual transportation expenses and for no other purpose; (3) payments in excess of actual expenses may result in federal, state, and local tax liability and affect benefits conditioned on income; and (4) they will be required to return payments that were based on the submission of false information.

Participating parents will be required to submit weekly payment requests to the Office certifying the number of days that they transported their children to and from school during the preceding week. Parents will not be required to substantiate actual transportation expenses.

LAW AND ANALYSIS

Section 61(a) of the Code provides that gross income includes “all income from whatever source derived.” Accordingly, a taxpayer must include in gross income any accession to wealth unless the taxpayer can point to another section that excludes the accession from gross income. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955).

The Supreme Court has long held that a taxpayer realizes income when he is reimbursed for personal expenses. See *Old Colony Trust Co. v. Commissioner*, 279 U.S. 716 (1929); *Commissioner v. Jacobson*, 336 U.S. 28 (1949). Thus, the amount a parent will receive as reimbursements for expenses may constitute an item of gross income. However, in several revenue rulings, the Service has held that reimbursements for expenses incurred by a taxpayer on behalf of another outside of the employment context are not includable in the taxpayer’s gross income.

In Rev. Rul. 57-60, 1957-1 C.B. 25, *as modified by* Rev. Rul. 60-280, 1960-2 C.B. 12, the Service concluded that a parent is not required to include in gross income reimbursements from a state for transporting his or her child to school where bus service is not available. The Service reasoned that the reimbursement was for an expense incurred on behalf of the school board that was obligated to furnish transportation to the school children.

In Rev. Rul. 67-30, 1967-1 C.B. 9, the Service addressed the tax consequences of per diem allowance paid to a taxpayer to cover reasonable travel expenses, including meals and lodging, while away from home performing gratuitous services for an exempt organization. The Service held that the taxpayer providing gratuitous services to a section 170(c) organization must include in gross income only reimbursed expenses in excess of actual travel expenses. See *also* Rev. Rul. 80-99, 1980-1 C.B. 10.

Section 6041(a) of the Code requires all persons engaged in a trade or business and making payments in the course of such trade or business to another person of rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year to file an information return with the Service setting forth the amount of such gains, profits, and income, and the name and address of the recipient of the payment.

Section 1.6041-1(b) of the Income Tax Regulations (regulations) defines the terms “persons engaged in a trade or business” to include organizations the activities of which are not for profit or gain.

Section 1.6041-1(c) of the regulations provides that income is fixed when it is paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

CONCLUSION

In the instant case, the Department is obligated to provide transportation services to eligible City students. The payments are made to parents to reimburse the parents for expenses that they incur on behalf of the Department. Accordingly, reimbursements received by parents under the Program are not includable in the parents’ gross income, except to the extent that the reimbursements exceed the parents’ actual transportation expenses.

Further, the Department will not know the parents’ actual transportation expenses. Because the Department will not know how much of the reimbursements will be excludable from the parents’ gross income, the amount, if any, includable in the parents’ gross income is not fixed and determinable. Unless the Department has knowledge of payments that are includable in the parents’ gross income, § 6041(a) does not require the Department to issue information returns. Accordingly, we conclude that the Department is not required to file information returns reporting payments to parents as reimbursements for the transportation expenses, unless the Department has knowledge that the amounts that are paid exceed the parents’ actual expenses by \$600 or more.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Donna Welsh
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)